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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,258	11/25/2003	Steven D. Girouard	279.466US1	6079
21186 7590 09/10/2007 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER GETZOW, SCOTT M	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 09/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/723,258

Applicant(s)

GIROUARD ET AL.

Examiner

/Scott M. Getzow/

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-33 is/are pending in the application.
- 4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/6/07.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

Claim Rejections - 35 USC § 103

1. Claims 1-3,6-11,13-15,17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chachques (2002/0124855) in view of Heynen et al (6,507,756).

As mentioned in previous office actions, Chachques teaches in vitro, and in vivo, stimulation of cells, see abstract. Further, Chachques teaches the benefits of such stimulation, and uses a pacemaker to pace the heart as well as deliver stimulation to the implanted cells that cause them to perform as intended.

Further, par. 25 of Chachques teaches administering an agent that promotes the effectiveness of the cells. The patent to Heynen is used to explicitly teach the use of a programmable pacemaker that has one or more catheter leads, and a sense amplifier. The newly added language to the claims 'including specialized cell therapy pacing cycles' is considered to be analogous to the electrical stimulation to enhance the cells, as taught by Chachques. One of ordinary skill in the art would understand that pacemakers could have a variety of modes that can be programmed into them, including specialized cell therapy modes. Further, the method steps of the above claims are considered to follow obviously from the normal workings of the above combination.

2. Claims 4,5,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chachques (2002/0124855) and Heynen et al (6,507,756) and further in view of Bonnet (6,574,507).

See previous office action.

Specification

3. The disclosure is objected to because of the following informalities: page 1, line 5 is missing the correct serial number. Apparently, the number 11/722,115 is incorrect.

Appropriate correction is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Scott M. Getzow/ whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/
Primary Examiner

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SMG